

**DISTRICT OF COLUMBIA
DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS**

NOTICE OF FINAL RULEMAKING

The Interim Commissioner of the Department of Banking and Financial Institutions, pursuant to the authority set forth in Section 22 of the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1121 (2001)) (“Act”), and section 105(a)(5), (c), and (f) of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.05(a)(5), (c), and (f)), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Title 26A, “Banking and Financial Institutions,” of the District of Columbia Municipal Regulations to add a new chapter, “Chapter 11 Mortgage Lenders and Brokers”. The proposed rules provide for the registration, examination, investigation, and supervision of mortgage lenders and brokers in the District of Columbia. No changes have been made to the text of the proposed rules as published with the Notice of Proposed Rulemaking in the D.C. Register on January 23, 2004, at 51 DCR 940. Final action to adopt these rules was taken on February 26, 2004. These final rules will become effective upon publication of this notice in the D.C. Register.

CHAPTER 11. MORTGAGE LENDERS AND BROKERS

1100 SCOPE AND APPLICABILITY

- 1100.1 This chapter shall apply to any person who engages in business as a mortgage lender, mortgage servicer, or mortgage broker in the District or who issues, makes, services, or brokers a mortgage loan secured by an interest in residential real property located in the District.
- 1100.2 A mortgage loan shall include any extension of credit that is secured, in whole or in part, by an interest in residential real property located in the District, including but not limited to a closed-end line of credit, home equity line of credits, line of credit, open-end line of credit, and reverse mortgage.
- 1100.3 This chapter does not apply to any person who qualifies for an exemption pursuant to section 3 of the Act, or is excluded from the definition of “mortgage broker” or “mortgage lender” as those terms are defined in section 2(1) and (11)(B) of the Act.

1101 EXEMPTIONS

1101.1 Unless preempted by federal law, an affiliate or subsidiary of a federal, state, or District bank, trust company, savings bank, savings and loan association, or credit union is exempt from obtaining a license pursuant to the Act only if the affiliate or subsidiary maintains its principal office in the District and the parent company of the affiliate or subsidiary maintains its principal office in the District.

1102 LICENSING OF MORTGAGE LENDERS, MORTGAGE SERVICERS, AND MORTGAGE BROKERS

1102.1 No person shall engage in the business as a mortgage lender, mortgage servicer, or mortgage broker, or hold himself or herself out to the public as a mortgage lender, mortgage servicer, or mortgage broker unless a licensing application is filed and approved by the Department, and the person has a valid license from the Department.

1102.2 An applicant for a license to engage in business as a mortgage lender or mortgage servicer, or both, shall file a mortgage lender license application with the Department.

1102.3 An applicant for a license to engage in business as a mortgage broker shall file a mortgage broker license application with the Department.

1102.4 An applicant for a license to engage in business as a mortgage servicer or mortgage lender, or both, and a mortgage broker, shall file a dual mortgage lender and broker license application with the Department.

1102.5 A license application shall be filed on a form prescribed by the Department, including all information required by the Department, and be accompanied with the required fees as prescribed by the Department pursuant to section 4(f) of the Act.

1102.6 The Department may deny a license application if the application is not accompanied with the fees required pursuant to § 1102.5, or it is incomplete.

1102.7 The Department shall approve or deny a license application not later than forty-five (45) days from the date the completed application is filed with the Department.

1102.8 Any license issued pursuant this section shall expire one year from the date the license was issued.

1103 RENEWAL OF LICENSE

1103.1 In order to renew a license pursuant to section 8 of the Act, a licensee shall file a renewal license application, on a form prescribed by the Department, and be

accompanied with the required fees as prescribed by the Department pursuant to section 8(d) of the Act and § 1104, on or before the expiration date of the licensee's current license.

- 1103.2 A renewal license application filed after the renewal-filing deadline established in § 1103.1 shall be subject to, and accompanied by, a renewal late fee in the amount of three hundred (\$300) dollars, in addition to the fees imposed in § 1103.1.
- 1103.2 The fees established by §§ 1103.1 and 1103.2 shall be non-refundable.
- 1103.3 The Department shall approve or deny the renewal license application not later than forty-five (45) days from the date the renewal application was filed with the Department, unless the Department extends the time within a forty-five (45)-day period for approving or denying the renewal license application.
- 1103.4 The Department may deny a renewal license application if the fees required by §§ 1103.1 and 1103.2 are not submitted with the license renewal application.

1104 ANNUAL ASSESSMENTS

- 1104.1 Except as provided by §§ 1104.2 and 1104.3, each person licensed under the Act and filing an application to renew its license pursuant to § 1103, shall be subject to the following assessments upon the renewal of its license:
- (a) Four hundred dollars (\$400), plus six dollars and sixty cents (\$6.60) per loan brokered in the previous license period for a mortgage broker license;
 - (b) Eight hundred dollars (\$800), plus six dollars and sixty cents (\$6.60) per loan made, originated, brokered, or serviced in the previous license period for a mortgage lender license; or
 - (c) One thousand, two hundred dollars (\$1,200), plus six dollars and sixty cents (\$6.60) per loan made, originated, brokered, or serviced in the previous license period for a dual mortgage lender and broker license.
- 1104.2 No person shall be subject to the annual assessment established pursuant to § 1104.1 in any year in which the person is assessed an examination fee pursuant to section 8(d) of the Act, and submits the examination fee to the Department within thirty (30) days of the due date of the examination fee.
- 1104.3 Any annual assessment assessed against a licensee pursuant to § 1104.1 shall not exceed fifty thousand dollars (\$50,000) within any one-license year for any licensee.
- 1104.4 Any person who files an application pursuant to §§ 1102.2, 1102.3, or 1102.4, and was licensed by the Department as a mortgage broker, mortgage lender, or dual

mortgage lender and broker during the one-year period preceding the filing of the application, shall be assessed the annual assessment established pursuant to section 1104.1, in addition to any fees required by section 4(f) of the Act.

1105 DISCLOSURES (Reserved)

1106 MORTGAGE LOAN APPLICATION AND APPROVAL PROCESS

1106.1 Each application for a proposed mortgage loan must be signed and dated by each borrower on each page of the mortgage loan application and shall contain, or have attached to the application, at a minimum, the following information:

- (a) The name, social security number, address, telephone number, and source of income of each borrower;
- (b) The address and legal description, if available, of the real property that is being secured by the loan;
- (c) The principal amount of the loan requested;
- (d) The current income and current debt of each borrower as provided by each borrower;
- (e) The current assets and current liabilities of each borrower as provided by each borrower;
- (f) Disclosure as to whether the loan will refinance a prior loan secured by the same real property; and
- (g) If the loan will refinance a prior loan secured by the same real property, the purpose of the refinancing, and the amount of the loan that is being refinanced.

1106.2 In addition to the information required in § 1106.1, the following information shall be included in, or attached to, a mortgage loan application if available at the time of the application:

- (a) The cost of the mortgage loan, including the annual percentage rate, interest rate, broker compensation, lender compensation, and finance charge;
- (b) The date of maturity of the proposed loan;
- (c) Disclosure as to whether the interest rate is fixed or variable;

(d) For proposed loans with a proposed variable rate of interest, disclosure of the index used for adjustments, limits on adjustments, and the adjustment period; and

(e) Disclosure as to whether the loan may result in a balloon payment.

1106.3 If a mortgage loan application is approved and executed without the information required by §§ 1106.1 and 1106.2, the mortgage loan application shall be voidable by the borrower(s), prior to the loan closing, and any fees submitted by the borrower(s) in connection with the application shall be returned to borrower(s) in the event the borrower(s) void the mortgage loan application.

1106.4 The current income, current debt, current assets, current liabilities, and employment of each borrower shall be verified in accordance with standard residential mortgage lending industry practices that are commonly used to underwrite a loan secured by a residential lien instrument.

1106.5 A licensee shall be deemed to have complied with § 1106.4 if the licensee verified the current income, current debts, current assets, current liabilities, and employment of each borrower in accordance with the verification guidelines and practices of the Federal National Mortgage Association, Federal Home Loan Corporation, U.S. Department of Housing and Urban Development, or the U.S. Department of Veterans Affairs.

1106.6 Nothing in this section shall preclude the use of other standard industry verification practices accepted by applicable regulatory authorities.

1106.7 A borrower may withdraw a mortgage loan application at anytime, with no penalty or fee, except for any reasonable application fee, prior to signing a financing agreement or written commitment.

1107 WRITTEN COMMITMENTS, FINANCING AGREEMENTS, AND LOCK-IN AGREEMENTS

1107.1 A written commitment shall include the following:

(a) If available, identification of the real property intended to secure the mortgage loan;

(b) The principal amount and maturity term of the mortgage loan;

(c) The interest rate and points for the mortgage loan if the commitment agreement is also a lock-in agreement, or a statement that the mortgage loan will be made at the mortgage lender's prevailing rate and points for such loans at the time of closing or a specified number of days prior to closing;

- (d) The amount of any commitment fee and the time within which the commitment fee must be paid;
- (e) Disclosure as to whether funds will be escrowed and, if so, the purpose of the escrow;
- (f) Disclosure as to whether private mortgage insurance or any other type of insurance is required;
- (g) The length of the commitment period;
- (h) A statement that if the mortgage loan is not closed, for any reason, within the commitment period, the mortgage lender is no longer obligated by the commitment agreement and any commitment fee paid shall be refunded to the borrower;
- (i) A statement that the agreement is binding on both parties. The statement shall be disclosed in bold-faced type and at least a font size greater than the other language in the agreement; and
- (j) Any other reasonable terms and conditions that the mortgage lender elects to disclose in the commitment agreement.

1107.2 A financing agreement containing the information required in section 14 of the Act may be submitted and executed in lieu of a written commitment if the financing agreement is not subject to a future determination, change, or alteration, and the financing agreement meets the requirements in § 1107.1.

1107.3 A written commitment executed pursuant to section 15(a)(8) of the Act may be submitted in lieu of a financing agreement if the written commitment contains the information required in section 14 of the Act and the information required in § 1107.1.

1107.4 The mortgage lender may enter into a lock-in agreement if the mortgage lender and each borrower sign the agreement, and the agreement contains the information required in § 1107.5.

1107.5 The lock-in agreement shall include the following:

- (a) The interest rate and points for the mortgage loan, and if the rate is an adjustable rate, disclosure of the initial rate, the index used for adjustments, limits on adjustments, and the adjustment period;
- (b) The amount of any lock-in fee and the time within which the lock-in fee must be paid;

- (c) The length of the lock-in period;
- (d) A statement that if the mortgage loan is not closed within the lock-in period, for any reason, the mortgage lender is no longer obligated by the lock-in agreement and any lock-in fee paid by the borrower shall be refunded;
- (e) A statement that any terms not locked-in by the lock-in agreement are subject to change until the mortgage loan is closed at settlement; and
- (f) Any other reasonable terms and conditions of the lock-in agreement required by the lender.

1107.6 A written commitment, financing agreement, or lock-in agreement executed pursuant to this section may be deemed voidable and unenforceable unless the agreement is signed by the borrower and contains the information required by this section.

1108 MORTGAGE LENDER AND MORTGAGE BROKER FEES

1108.1 For purposes of this section, a fee shall include the rate of interest, annual percentage rate, finance charge, points, yield spread premium, or any other monetary costs charged to a borrower for the origination, service, or brokering of a mortgage loan.

1108.2 A licensee shall charge fees that are reasonable and for services actually performed by the licensee or a third party providing services on behalf of licensee.

1108.3 Unless otherwise stated, any fee charged pursuant to § 1108.1 shall be disclosed and charged in accordance with applicable District and federal law, including TILA and RESPA.

1109 APPRAISAL

1109.1 A mortgage lender or a mortgage broker shall not use an appraisal conducted for real property located in the District of Columbia, which will be used to secure a mortgage loan, unless the appraisal was conducted by an appraiser that is licensed and authorized to conduct business in the District of Columbia.

1110 RECORDKEEPING

1110.1 For each mortgage loan brokered or originated, a licensee shall retain a copy of the following documents, if applicable, for each loan for at least three years after final payment is made on any mortgage loan, or after the mortgage loan is sold, whichever comes first:

- (a) Mortgage loan application;

- (b) Settlement statements or forms required to be executed or completed pursuant to RESPA;
- (c) Forms or documents required to be executed or completed pursuant to TILA;
- (d) Financing agreement;
- (e) Written commitment;
- (f) Lock-in agreement;
- (g) Promissory note;
- (h) Deed of trust;
- (i) Lien release;
- (j) Certification of satisfaction; and
- (k) Any other document that the Department may require the licensee to maintain.

1110.2 The licensee shall provide a copy of the documents listed in § 1110.1 to the borrower within ten (10) business days of execution or completion of the document unless federal law prescribes a different timeframe.

1112 ESCROW ACCOUNTS

1112.1 A mortgage lender may not impose a penalty or fee, including an increase in interest or other finance charges, on any borrower where a borrower is not required, pursuant to section 16 of the Act, to make advance payments of real estate taxes or insurance premiums because the borrower has made a down payment equaling twenty percent (20%) or more of the total purchase price of the property or who has an equity interest in the property equal to, or greater than, twenty percent (20%) of the fair market value of the property, and the borrower elects not to make escrow payments to the mortgage lender.

1113 APPLICABILITY OF FEDERAL LAW

1113.1 Unless otherwise stated in the Act, a licensee or person required to be licensed under the Act shall comply with applicable federal law and any rule, regulation, order, or interpretation promulgated or issued pursuant to the applicable federal law.

1114 EXAMINATIONS AND INVESTIGATIONS (RESERVED)

1115 COMPLAINTS

- 1115.1 Each licensee shall file with the Department a written notice designating a contact person to serve as the point of contact for complaints filed with the Department against the licensee. The notice shall include the designee's name, title, email address, phone number, and address.
- 1115.2 All complaints shall be filed with the Department, on a form prescribed by the Department, and in accordance with any procedures or processes adopted by the Department.

1116 REVOCATION AND SUSPENSION OF LICENSE

- 1116.1 The Department, prior to taking any enforcement action pursuant to sections 18 and 19 of the Act against a person, including a licensee, shall issue and serve, by United States mail, on the person or the registered agent of the person, a notice of its intent to take enforcement action against the person.
- 1116.2 A notice of intent to take enforcement action shall include:
- (a) The basis for the proposed action;
 - (b) The date by which the person shall file a written response with the Department;
 - (c) The date and time of the hearing, if a hearing is requested by the person;
 - (d) Notice that the failure of the person to file a written response with the Department to a notice of intent to take enforcement action or a temporary order within the specified time period shall constitute a waiver of a hearing and shall constitute consent to a final order; and
 - (e) The date by which the Department shall issue a final order taking the proposed enforcement action in the event the person fails to respond to the notice of intent to take enforcement action by the date provided in the notice of intent to take enforcement action.
- 1116.3 The Department may issue a temporary order taking enforcement action against a person without serving a prior notice of intent to take enforcement action pursuant to § 1116.1 if the Department determines that the person has engaged in conduct that is likely to cause one or more of the conditions as set forth in section 117(b) of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.17(b) (2001)).

- 1116.4 A person may file a written response to a notice of intent to take enforcement action or a temporary order within fifteen (15) days from the date of service of the notice of intent to take enforcement action or temporary order was served upon the person. The written response shall include:
- (a) An explanation of why the proposed action or temporary order is not warranted; and
 - (b) Any other relevant information, mitigating circumstance, documentation, or other evidence in support of the person's position.
- 1116.5 The Department shall issue a final order within fifteen (15) days after receiving a response from the person pursuant to § 1116.4, or after the deadline upon which a response from the person was due pursuant to § 1116.4.
- 1116.6 Unless otherwise required by the Act, a final order, temporary order, or any other type of enforcement action taken by the Department shall be issued or conducted in accordance with subchapter IV of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code §§ 26-551.09 through 551.21(2001)), and its implementing rules and regulations.

1117 ADMINISTRATIVE PENALTIES

1117.1 Any licensee which fails to file an annual report at the time prescribed by section 11 of the Act, shall be assessed a late penalty in the amount of fifty dollars (\$50) per business day following the date the annual report is due until the annual report is filed with the Department.

1117.2 Except as provided by § 1117.3, any licensee, or any person required to have a license under the Act, shall be assessed the following penalties upon a violation of the Act:

- (a) Two hundred dollars (\$200) for a single violation of the Act if the person committing the violation is licensed by the Department, and the licensee has no more than 1 violation of the Act during the current license period;
- (b) Five hundred dollars (\$500) per violation if the person committing the violation is licensed by the Department, and the licensee has no more than 4 violations of the Act during the current license period; or
- (c) One Thousand dollars (\$1,000) per violation if the person committing the violation is licensed by the Department, and the licensee has 5 or more violations of the Act during the current license period, or the person committing the violation is not licensed by the Department.

1117.3 The Commissioner, in his or her discretion, may reduce the penalty imposed by § 1117.2 upon good cause shown, in writing, by the person against whom the penalty would be imposed.

1199 DEFINITIONS

1199.1 For the purpose of this chapter, the following terms have the meaning ascribed:

Applicant - a person filing an application for a license, a renewal license, or a change in control under the Act, for an individual office location.

Closed-end credit - a consumer installment loan made for a predetermined amount, which requires periodic payments of principal and interests over a specified period or term.

Commissioner – the Commissioner of the Department of Banking and Financial Institutions.

Department - the Department of Banking and Financial Institutions.

Home equity line of credit – a loan secured by the equity value in a borrower's real property that allows the borrower to obtain cash, up to a predetermined amount, drawn against the accumulated equity of the borrower's real property.

Line of credit – a commitment by a financial institution to lend funds to a borrower up to a specified amount over a specified future period.

Lock-in agreement – an agreement that guarantees an interest rate during a specified period.

Mortgage Servicer - a person who engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person.

Open-end credit - a consumer line of credit that may be added to, up to a preset credit limit, or paid down at any time. Open-end credit is also referred to as revolving credit or charge account credit.

RESPA - the Real Estate Settlement Procedures Act (12 USC § 2601 et seq.) and implementing rules and regulations.

Reverse mortgage - a loan in which the borrower receives periodic payments from the lender, based on the accumulated equity in the borrower's real property that secures the loan. The loan comes due when the owner dies, or sells, or moves out of, the real property.

TILA - the Truth In Lending Act (15 USC § 1601 et seq.) and implementing rules and regulations.